

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618

CHARLES W. WELCH, III
JUDGE

March 30, 2011

Peter K. Schaeffer, Jr., Esq.
Chasanov & Schaeffer
1073 S. Governors Ave.
Dover, DE 19904

Gregory A. Morris, Esq.
Liguori & Morris
46 The Green
Dover, DE 19901

RE: Isaac I. Qwepue v. LHID Parkers, LLC
C.A.No.: CPU5-09-003041
(Appeal from Justice of the Peace Court)
Decision on Dismissal of Civil Appeal

Dear Mr. Schaeffer and Mr. Morris:

The court has considered both of your responses to its correspondence regarding whether the appellant's above-referenced civil appeal from a Justice of the Peace decision against him should be dismissed for a failure to timely file the appeal. Please be advised that after a careful consideration of your submissions, the appellant's appeal is dismissed with prejudice as he failed to file the appeal in a timely manner pursuant to 10 *Del. C.* Section 9571.

The record indicates that the Justice of the Peace Court awarded the appellee \$530.96, in addition to court costs, attorney fees and interest on December 7, 2009, for its claim in this matter. The appellant filed an appeal of the Justice of the Peace Court's decision with this court on December 23, 2009. In correspondence dated February 10, 2011, the court asked the position of each party as to whether the appeal was timely filed and whether it should be dismissed

Appellant contends that the court should consider his appeal because Rule 6(e) of the Justice of the Peace Civil Rules states that three days shall be added to a prescribed period when service is by mail. Furthermore, the appellant argues that the fact that he

was acting *pro se* at the time of the appeal should be considered by the court. Finally, the appellant contends that the court should consider that he did not receive the Justice of the Peace Notice of Court Action until December 22, 2009, and that his appeal was dated that date on its face. Appellee argues that appellant failed to comply with 10 *Del. C.* Section 9571 in filing his appeal and it should be dismissed by the court.

Pursuant to 10 *Del. C.* Section 9571(b), a civil appeal from any final order, ruling, decision or judgment of a Justice of the Peace to the Court of Common Pleas must be taken within fifteen days of the final order, ruling, decision or judgment. “It is well settled that Section 9571 is a jurisdictional statute governing the right to appeal from the Justice of the Peace Court.” *Gibson v. Car Zone*, 2007 WL 3231595, at *1 (Del.Com.Pl.). “When appellant violates the statute the court loses subject matter jurisdiction to hear the appeal.” *Id.*

The disposition from which this appeal has been taken was entered on December 7, 2009, by the Justice of the Peace Court. The appellant’s appeal of this decision was filed with this court on December 23, 2009. Sixteen days elapsed between the Justice of the Peace Court’s decision and the appellant’s filing with this court. Therefore, the appeal was not timely filed pursuant to Section 9571(b). Given this fact, this court is without jurisdiction to consider the appellant’s appeal.

Appellant’s arguments in opposition of the dismissal of his appeal lack merit. First, this court is not bound by and will not consider the Justice of the Peace Civil Rules when considering whether an appeal has been timely filed. Second, while the court attempts to accommodate *pro se* litigants to the best of its ability, it may not consider a case over which it has no jurisdiction. Deadlines to file appeals must be strictly enforced as they confer jurisdiction, regardless of whether the party filing the appeal is represented by legal counsel. Third, the date written on an appeal to this court is irrelevant. The date on which an appeal is filed with this court controls under a Section 9571 analysis. Finally, the court is not persuaded by the appellant’s argument that he did not receive the Justice of the Peace Notice of Court Action until December 22, 2009. The record indicates that appellant was present when the Justice of the Peace Court entered its

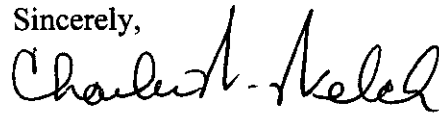
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decision and judgment against him. Thus, appellant was fully aware of the decision and judgment. It was his duty to timely file an appeal with this court.

Given the court's findings of fact and conclusions of law, the appellant's appeal for this matter is dismissed with prejudice as it was not timely filed.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" and last name "Welch" being clearly legible, followed by a stylized "III".

Charles W. Welch, III

CWW:mek